

AMENDED IN ASSEMBLY MARCH 23, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2416

Introduced by Assembly Member Cook

February 19, 2010

An act to amend Section 3047 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 2416, as amended, Cook. Child custody: parent on active military duty.

Existing law provides that a party's absence, relocation, or failure to comply with custody and visitation orders is not, by itself, sufficient to justify a modification of a custody or visitation order if the reason for the absence, relocation, or failure is the party's activation to military service and deployment out of state.

This bill would ~~prohibit the court from considering a party's absence, relocation, or failure to comply with custody and visitation orders in determining whether to modify a custody or visitation order if the reason for the~~ *apply this provision to cases in which a party's* absence, relocation, or failure to comply is *due to* the party's activation to military service, mobilization in support of combat or other military operation, or military deployment out of state, as defined. The bill would authorize the court to issue a temporary order for custody and visitation for the period in which the party will be deployed, ~~as specified, and to delegate the party's visitation rights to a family member or a stepparent, as specified~~ *mobilized, or on temporary duty, and would establish a presumption that, upon the return of the party, the order shall revert back to the custody order that was in place prior to the temporary order.*

The bill would further authorize the court to grant visitation rights to a stepparent or grandparent if the court finds that the visitation would facilitate the child's contact with the party and would be in the best interest of the child. The bill would require the court to order an expedited hearing or allow the party to present evidence and participate in court-ordered custody mediation by electronic means under specified circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3047 of the Family Code is amended to
2 read:

3 3047. (a) A party's absence, relocation, or failure to comply
4 with custody and visitation orders shall not ~~be considered in~~
5 ~~determining whether to modify, by itself, be sufficient to justify a~~
6 ~~modification of~~ a custody or visitation order if the reason for the
7 absence, relocation, or failure to comply is the party's activation
8 to military duty or temporary duty, mobilization in support of
9 combat or other military operation, or military deployment out of
10 state.

11 (b) (1) If a party with sole or joint physical custody or visitation
12 receives temporary duty, deployment, or mobilization orders from
13 the military that require the party to move a substantial distance
14 from his or her residence or otherwise has a material effect on the
15 ability of the party to exercise custody or visitation rights, ~~the court~~
16 ~~may do both of the following:~~

17 ~~(1) Issue a temporary custody or visitation order for the period~~
18 ~~extending from the date of the party's departure to the date of his~~
19 ~~or her return. This temporary custody or visitation order shall~~
20 ~~terminate upon the return of the party, at which time the prior~~
21 ~~custody or visitation order shall return to effect.~~

22 ~~(2) Issue an order delegating all or part of the party's visitation~~
23 ~~rights to a family member with a close relationship to the child,~~
24 ~~or a stepparent of the child pursuant to Section 3101, for the~~
25 ~~purpose of ensuring that the child's contact with the party is~~
26 ~~frequent and continued while the party is deployed, mobilized, or~~
27 ~~on temporary duty, if the court finds that delegating visitation~~
28 ~~rights is in the best interest of the child. and the court modifies the~~

1 existing custody order, the modification shall be deemed a
2 temporary custody order and shall be subject to review and
3 reconsideration upon the return of the party. If the temporary
4 order is reviewed, there shall be a presumption that the order shall
5 revert to the order that was in place before the temporary order;
6 unless the court determines that it is not in the best interest of the
7 child.

8 (2) (A) If the court makes a temporary custody order, it shall
9 consider any appropriate orders to ensure that the relocating party
10 can maintain frequent and continuing contact with the child by
11 whatever means are available.

12 (B) Upon a motion by the relocating party, the court may order
13 that a stepparent, grandparent, or other family member with a
14 preexisting close relationship with the child be granted visitation
15 rights if that visitation is in the best interest of the child and will
16 facilitate the child's contact with the relocating party.

17 (C) Nothing in this paragraph shall increase the authority of
18 the persons described in subparagraph (B) to seek visitation orders
19 independently, and the court shall not grant visitation to a
20 nonparent over the objection of a parent if it would violate the
21 fundamental rights of the parent.

22 (D) The granting of visitation rights to a nonparent pursuant
23 to subparagraph (B) shall not impact the calculation of child
24 support.

25 (c) If a party's deployment, mobilization, or temporary duty
26 will have a material effect on his or her ability, or anticipated
27 ability, to appear in person at a regularly scheduled hearing, the
28 court shall do either of the following:

29 (1) Upon motion of the party, hold an expedited hearing to
30 determine custody and visitation issues prior to the departure of
31 the party.

32 (2) Upon motion of the party, allow the party to present
33 testimony and evidence *and participate in court-ordered child*
34 *custody mediation* by electronic means, including, but not limited
35 to, telephone, video teleconferencing, or the Internet, *to the extent*
36 *that this technology is reasonably available to the court and*
37 *protects the due process rights of all parties.*

38 (d) For purposes of this section, the following terms have the
39 following meanings:

1 (1) “Deployment” means the temporary transfer of a member
2 of the Armed Forces in active-duty status in support of combat or
3 some other military operation.

4 (2) “Mobilization” means the transfer of a member of the
5 National Guard or Military Reserve to extended active-duty status,
6 but does not include National Guard or Military Reserve annual
7 training.

8 (3) “Temporary duty” means the transfer of a service member
9 from one military base to a different location, usually another base,
10 for a limited period of time to accomplish training or to assist in
11 the performance of a noncombat mission.

12 (e) It is the intent of the Legislature that this section provide a
13 fair, efficient, and swift process to resolve child custody and
14 visitation issues when a party receives temporary duty, deployment,
15 or mobilization orders from the military.